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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,338	04/09/2004	Christa Harris	THR-6216	1230

7590 12/15/2004

ALLEGIANCE CORPORATION
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EXAMINER

ROANE, AARON F

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/821,338

Applicant(s)

HARRIS ET AL.

Examiner

Aaron Roane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/27/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitahara et al.

(USPN 5,261,241) in view of Maro et al. (USPN 5,491,018) and in further view of Helmeg (USPN 6,648,909 B2).

Regarding claims 1 and 3-7, Kitahara et al. disclose a topically applied thermal device (13) comprising a flexible plastic containment (10, 12 and 14) and activatable thermochemical liquid composition (C not shown in figure 2) encased therein, said flexible plastic containment comprising a multilayer film (10, 12 and 14) comprising: an outer polymeric barrier layer (12) comprising a coating (10), and an inner polymeric sealant layer (14). Kitahara et al. further disclose that the outer polymeric layer is comprised a layer of polyester (12) coated with a layer of aluminum (12) in order to provide the device with a liquid impervious, leak proof layer see col. 5, lines 29-61, col.

10 and figure 2. Kitahara et al. fail to disclose that the coating is either aluminum oxide or silicon oxide coating. Kitahara et al. also fail to disclose that the inner polymeric sealant layer comprises a blend of low density polyethylene (LDPE) and ethylvinyl acetate (EVA). Maro et al. disclose a laminated packing material and teach the coating of polyester with a silicon oxide layer in order to provide the device with a liquid impervious, leak proof layer, see col. 1-12. Helmeg discloses a hot/cold pack and teaches the use of making a inner layer, seal and/or bag from LDPE in order to provide a burstable/rupturable barrier to the device, see col. 1-6 and figures 1-9. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Kitahara et al., as taught by Maro et al., to coat the polyester layer with a silicon oxide layer in order to provide the device with a liquid impervious, leak proof layer, and as further taught by Helmeg, to make the inner layer, seal and/or bag from LDPE in order to provide a burstable/rupturable barrier to the device. Finally, at the time of the invention, it would have been an obvious matter of design choice to one of ordinary skill in the art to use an inner polymeric sealant layer comprised of low density polyethylene (LDPE) because Applicant has not disclosed that an inner polymeric sealant layer comprising a blend of low density polyethylene (LDPE) and ethylvinyl acetate (EVA) provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with only the LDPE because it also provides the burstable/rupturable capabilities.

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Regarding claim 2, Kitahara et al. further disclose a device comprising an adhesive layer laminating together said outer polymeric barrier layer and said inner polymeric sealant layer, see col. 6.

Regarding claim 8, Kitahara et al. disclose the claimed invention, see col. 1-16.

Regarding claims 9 and 10, Kitahara et al. disclose the claimed invention, see col. 1-16.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (703) 305-7377. The examiner can normally be reached on 9am - 5pm, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.R. *A. R.*
December 13, 2004

Roy D. Gibson
ROY D. GIBSON
PRIMARY EXAMINER